

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2007-1856-MWD-E **TCEQ ID:** RN103014999 **CASE NO.:** 34974
RESPONDENT NAME: Town of Van Horn

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Town of Van Horn Sewage Treatment Plant, located approximately one mile southeast of the intersection of U.S. Highway 10 and U.S. Highway 90, Culberson County</p> <p>TYPE OF OPERATION: Domestic wastewater treatment system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 14, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Mr. Andrew Hunt, Enforcement Division, Enforcement 1, MC 169, (512) 239-1203; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Okey D. Lucas, Mayor, Town of Van Horn, P.O. Box 517, Van Horn, Texas 79855 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review Relating to this Case: September 17, 2007</p> <p>Date of NOE Relating to this Case: November 8, 2007 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>WATER</p> <p>Failure to comply with the permitted effluent limitations for five-day biochemical oxygen demand and total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014241001, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$2,900</p> <p>Total Deferred: \$580 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$2,320</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p> <p>2) The Order will require the Respondent to submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0014241001, within 60 days after the effective date of this Agreed Order. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0014241001

Attachment A
Docket Number: 2007-1856-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Town of Van Horn
Payable Penalty Amount:	Two Thousand Three Hundred Twenty Dollars (\$2,320)
SEP Amount:	Two Thousand Three Hundred Twenty Dollars (\$2,320)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP:	Culberson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	12-Nov-2007	Screening	15-Nov-2007	EPA Due	
	PCW	13-Nov-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Town of Van Horn		
Reg. Ent. Ref. No.	RN103014999		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34974	No. of Violations	1
Docket No.	2007-1856-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Andrew Hunt
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **Subtotals 2, 3, & 7**

45% Enhancement

Notes

An enhancement is recommended due to eight self-reported effluent violations and one NOV with same or similar violations.

Culpability

No

0% Enhancement

Subtotal 4

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 Total EB Amounts Approx. Cost of Compliance

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

Adjustment

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

DEFERRAL

20%

Reduction

Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 15-Nov-2007

Docket No. 2007-1856-MWD-E

PCW

Respondent Town of Van Horn

Policy Revision 2 (September 2002)

Case ID No. 34974

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN103014999

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	9	45%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 45%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

An enhancement is recommended due to eight self-reported effluent violations and one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date 15-Nov-2007 Respondent Town of Van Horn Case ID No. 34974 Reg. Ent. Reference No. RN103014999 Media [Statute] Water Quality Enf. Coordinator Andrew Hunt Violation Number 1	Docket No. 2007-1856-MWD-E PCW	<i>Policy Revision 2 (September 2002)</i> <i>PCW Revision November 6, 2007</i>							
Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014241001, Effluent Limitations and Monitoring Requirements No. 1									
Violation Description Failed to comply with the permitted effluent limitations, as shown in the attached effluent table.									
Base Penalty		\$10,000							
>> Environmental, Property and Human Health Matrix									
OR	Release	Harm							
		Major Moderate Minor							
	Actual	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px; text-align: center;">x</td></tr> </table>		x	Percent 10%				
x									
Potential	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> </table>								
>> Programmatic Matrix									
	Falsification	Major Moderate Minor							
	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> </table>			<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> </table>			Percent 0%		
Matrix Notes	A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. In addition, total suspended solids were considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.								
Adjustment		\$9,000							
			\$1,000						
Violation Events									
Number of Violation Events 2		151 Number of violation days							
mark only one with an x	daily monthly quarterly semiannual annual single event	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px; text-align: center;">x</td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> <tr><td style="width: 50px; height: 20px;"></td></tr> </table>			x				Violation Base Penalty \$2,000
x									
Two quarterly events are recommended.									
Economic Benefit (EB) for this violation		Statutory Limit Test							
Estimated EB Amount \$896		Violation Final Penalty Total \$2,900							
		This violation Final Assessed Penalty (adjusted for limits) \$2,900							

Economic Benefit Worksheet

Respondent Town of Van Horn
Case ID No. 34974
Reg. Ent. Reference No. RN103014999
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	1-Jan-2007	12-Apr-2008	1.3	\$43	\$853	\$896
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to evaluate causes of effluent excursions and to rehabilitate the system. Date Required is first date of non-compliance. Final Date is expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$896

EFFLUENT VIOLATION TABLE

Town of Van Horn Sewage Treatment Plant

TPDES Permit No. WQ0014241001

Docket No. 2007-1856-MWD-E

Months	BOD 5-Day ave. conc. Limit = 30 mg/L	Total Suspended Solids Daily ave. conc. Limit = 90 mg/L
1/31/2007	43.32	91.5
2/28/2007	49.7	135.5
3/31/2007	41.9	c
4/30/2007	38.5	120.5
5/31/2007	32.3	c

ave. = average

c = compliant

BOD = Biochemical Oxygen Demand

mg/L = milligrams per Liter

conc. = concentration

Compliance History

Customer/Respondent/Owner-Operator: CN602297111 TOWN OF VAN HORN Classification: AVERAGE Rating: 1.80

Regulated Entity: RN103014999 TOWN OF VAN HORN SEWAGE TREATMENT PLANT Classification: AVERAGE Site Rating: 1.80

ID Number(s): WASTEWATER PERMIT WQ00142410
WASTEWATER PERMIT TPDES01078
WASTEWATER PERMIT TX0107867
WASTEWATER PERMIT TPDES01078
WASTEWATER EPA ID TX0107867

Location: LOCATED APPROX. 1 MILE SOUTHEAST OF THE INTERSECTION OF U.S. IH-10 AND U.S. HWY 90 IN CULBERSON COUNTY TEXAS. Rating Date: 9/1/2007 Repeat Violator: NO

TCEQ Region: REGION 06 - EL PASO

Date Compliance History Prepared: November 12, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 12, 2002 to November 12, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Andrew Hunt Phone: 512-239-1203

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	12/18/2002	(152640)
2	01/30/2003	(152643)
3	02/24/2003	(152647)
4	03/14/2003	(152614)
5	04/16/2003	(152616)
6	04/24/2003	(152621)
7	02/27/2004	(323693)
8	03/30/2004	(323694)
9	05/05/2004	(268405)
10	05/17/2004	(364796)
11	06/29/2004	(277986)
12	02/21/2005	(426526)
13	04/29/2005	(426527)
14	10/24/2005	(376336)
15	02/16/2006	(451796)
16	02/16/2006	(490546)
17	03/17/2006	(490547)
18	04/20/2006	(505376)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/28/2003	(152616)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	03/31/2004	(364796)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	05/07/2004	(268405)	Classification:	Moderate
Self Report?	NO			
Citation:	30 TAC Chapter 319, SubChapter A 319.11(c)			
Description:	The staff gauge on the 2' rectangular weir measuring effluent flow was not installed in the correct location.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to provide calibration records of flow measuring devices.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to comply with self-monitored effluent limitations.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to comply with water quality permit effluent limitations.			
Date:	02/28/2005	(426527)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	01/31/2007	(594793)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2007	(594793)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	03/31/2007	(594793)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	04/30/2007	(594793)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	05/31/2007	(594793)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TOWN OF VAN HORN
RN103014999**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1856-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Town of Van Horn ("the Town") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Town appear before the Commission and together stipulate that:

1. The Town owns and operates a domestic wastewater treatment system located approximately one mile southeast of the intersection of U.S. Highway 10 and U.S. Highway 90 in Culberson County, Texas (the "Facility").
2. The Town has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Town agree that the Commission has jurisdiction to enter this Agreed Order, and that the Town is subject to the Commission's jurisdiction.
4. The Town received notice of the violations alleged in Section II ("Allegations") on or about November 13, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Town of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Nine Hundred Dollars (\$2,900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Five Hundred Eighty Dollars (\$580) is deferred contingent upon the Town's timely and

satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Town fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Town to pay all or part of the deferred penalty. Two Thousand Three Hundred Twenty Dollars (\$2,320) shall be conditionally offset by the Town's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Town have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Town has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Town is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014241001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on September 17, 2007, and shown in the following effluent table:

EFFLUENT VIOLATION TABLE		
Months	BOD 5-day ave. conc.	Total Suspended Solids Daily ave. conc.
	Limit = 30 mg/L	Limit = 90 mg/L
1/31/2007	43.32	91.5
2/28/2007	49.7	135.5
3/31/2007	41.9	c
4/30/2007	38.5	120.5
5/31/2007	32.3	c

avg. = average

BOD = Biochemical Oxygen Demand

c = compliant

mg/L = milligrams per Liter

conc. = concentration

III. DENIALS

The Town generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Town pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Town's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Town of Van Horn, Docket No. 2007-1856-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Town shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Two Thousand Three Hundred Twenty Dollars (\$2,320) of the assessed administrative penalty shall be offset with the condition that the Town implement the SEP defined in Attachment A, incorporated herein by reference. The Town's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Town shall, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0014241001. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

4. The provisions of this Agreed Order shall apply to and be binding upon the Town. The Town is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Town fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Town's failure to comply is not a violation of this Agreed Order. The Town shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Town shall notify the Executive Director within seven days after the Town becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Town shall be made in writing to the Executive Director. Extensions are not effective until the Town receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Town in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Town, or three days after the date on which the Commission mails notice of the Order to the Town, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadlier

For the Executive Director

3/10/2008

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Okey D. Lucas

Signature

1-18-08

Date

Okey D. Lucas, Mayor

Name (Printed or typed)
Authorized Representative of
Town of Van Horn

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2007-1856-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Town of Van Horn
Payable Penalty Amount:	Two Thousand Three Hundred Twenty Dollars (\$2,320)
SEP Amount:	Two Thousand Three Hundred Twenty Dollars (\$2,320)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP:	Culberson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

